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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 060279.00071

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed Name _____	Application Number: 10/721,511 Filed: November 26, 2003
	First Named Inventor: Mauri SAKSIO
	Art Unit: 2616
	Examiner: Juvena W. Loo

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

_____
Signature

☐   Applicant/Inventor.

☐   assignee of record of the entire interest.
       See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed (Form PTO/SB/96)

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       Registration Number if acting under 37 CFR 1.34 _____

October 29, 2008
Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐   *Total of _____forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Mauri SAKSIO	Art Unit: 2616
Application No.: 10/721,511	Examiner: Juvena W. Loo
Filed: November 26, 2003	Attorney Dkt. No.: 060279.00071

For: METHOD AND SYSTEM FOR IMPLEMENTING A FAST RECOVERY PROCESS IN A LOCAL AREA NETWORK

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450   October 29, 2008

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-5, 7-14 and 16-20 in the above identified application. Claims 1-5, 7-14 and 16-20 were finally rejected in the Office Action dated May 29, 2008. Applicants filed a Response to the Final Office Action on August 27, 2008, and the Office issued an Advisory Action dated September 26, 2008 maintaining the final rejections of claims 1-5, 7-14 and 16-20. Applicants hereby assert that the final rejections are clearly in error and submit this Pre-Appeal Brief Request for Review.

The final Office Action rejected claims 1-5, 7-12, 14 and 16-20 as being anticipated by Saleh (US 7,200,104). Applicants submit that there is clear error with regard to the anticipation of at least one element of claims 1, 5, 9, 14 and 16-18 upon which claims 2-4, 7, 8, 10-13, 19 and 20 are dependent.

Applicants respectfully submit that Saleh fails to disclose or suggest all of the elements of the present claims. For example, Saleh does not disclose or suggest, at least, "monitoring in an intermediate tree element the state of a critical up-link, the critical up-link being an only link from the intermediate tree element to an upper stage tree element in the tree structure; detecting, in the intermediate tree element, a link-down state in the

critical up-link; and setting, in the intermediate tree element, a dependent down-link in a link-down state, if said critical up-link is detected to be in the link-down state, the dependent down-link leading to a lower stage tree element in the tree structure and being an only link from the intermediate tree element to the lower stage tree element in the tree structure, wherein the redundant tree structured local area network comprises at least two separate subtrees ending to a set of same host devices, wherein each subtree comprises at least one intermediate stage and wherein an intermediate stage tree element of one tree is not directly connected to an intermediate stage tree element of another tree at the same stage" as recited in claim 1.

Saleh also does not disclose or suggest, at least, "starting a recovery process in the host device by changing the failed active up-link to a redundant up-link leading to an upper stage intermediate tree element in a second tree," and "wherein the redundant tree structured local area network comprises at least two separate subtrees ending to a set of same host devices," as recited in claim 5 and similarly recited in claim 17. Similarly, Saleh fails to disclose or suggest a controller configured to "monitor the state of a critical up-link, the critical up-link being an only link to an upper stage tree element in the tree structure of a redundant tree structured local area network comprising at least two separate subtrees ending to a set of same host devices, wherein each subtree comprises to at least one intermediate stage and wherein an intermediate stage tree element of one tree is not directly connected to an intermediate stage tree element of another tree at the same stage, detect a link-down state in the critical up-link, and set a dependent down-link in a link-down state, the dependent down-link leading to a lower stage tree element in the tree structure and being an only link to the lower stage tree element in the tree structure," as recited in claim 9 and similarly recited in claims 16 and 18.

Further, Saleh also does not disclose or suggest a controller configured to "monitor the state of an active up-link leading to an intermediate tree element in a first tree of a redundant tree structured local area network comprising at least two separate subtrees ending to a set of same host devices, wherein each subtree comprises at least one intermediate stage and wherein an intermediate stage tree element of one tree is not directly connected to an intermediate stage tree element of another tree at the same stage, detect a link-down state in the active up-link," and "start a recovery process by changing the failed active up-link to a redundant up-link leading to an upper stage intermediate tree element in a second tree," as recited in claim 14.

Applicants note that a "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Additionally, the "identical invention must be shown in as complete detail as is contained in the...claim" Richardson v. Suzuki Motor Co., 868 F.2d

1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicants submit that the final Office Action is in clear error and has failed to establish a prima facie case for anticipation as Saleh fails to disclose each element of the claimed invention, as will be discussed in further detail below.

As evidenced by a review of Saleh, the reference fails to teach a redundant tree-structured network, as provided by the claimed invention. Instead, the solution disclosed in Saleh is directed to a mesh network. According to Saleh, when a physical path of a virtual path (VP) fails at a tandem node (intermediate node in the mesh network), the tandem node initiates a path restoration request for the end nodes (the tandem node sends a restore request both upstream and downstream. When another tandem node receives the restore request it forwards the request on appropriate link to the next node. When an end node receives the restore request, it switches the VP to a standby physical path (see Saleh, col. 4, lines 45-65). Therefore, one of the distinctions between the claimed invention and Saleh is that the claimed invention is directed to a redundant tree structured network, whereas Saleh only discloses a mesh network.

Another distinction between the claimed invention and Saleh relates to actions performed when failure occurs. According to the present invention, information about the failure "flows" down towards a host device differently than in Saleh. As an illustrative example of the present invention, the host device is stage 0, there are three stages above the host device, and the critical uplink (leading to stage 3) of an intermediate tree element at stage 2 is detected to be in the link-down state. Since there is only one link between the tree elements of stages 2 and 3, the intermediate node at stage 2 sets its dependent downlink to a link-down state (where the dependent downlink is an only link from the intermediate tree element to the lower stage (stage 1) tree element in the tree structure. Now, when the intermediate tree element at stage 1 detect that its critical uplink is in a link-down state, it set its dependent downlink to a link-down state. In this example, the dependent downlink is an active uplink of a host device at stage 0. When the host device detects the uplink to be in the link-down state, it starts a recovery process.

As present claim 1 recites, "*setting, in the intermediate tree element, a dependent down-link in a link-down state, if said critical up-link is detected to be in the link-down state*". This means that when a critical link fails in an intermediate tree element, the whole path finally ending to the host device is set to link-down state. This is completely different than what Saleh teaches. In Saleh, only one link between two network elements fails (cannot be used), whereas the remaining links in the mesh network remain functional.

A further difference between the claimed invention and Saleh is the way the host device detects a failure. In Saleh, the host device (end node) receives a path restoration request from an intermediate node, and acts based on the restoration request. According to the present invention, on the other hand, the host device detects the failure when an active uplink towards an intermediate node in the upper stage in the tree switches to linkdown state.

Thus, even if a skilled person were motivated to apply the teachings of Saleh into a tree structured network (not admitted), the skilled person would only come to a solution in which information about link failure between two nodes in the tree is sent downwards (towards host devices) in the tree, and finally a host device would receive the information. The host device, however, cannot perform any correct recovery actions because it does not have any information about the tree network topology.

The Advisory Action states that Saleh "discloses provisioning of Virtual path using 1+1 Protection restoration method [in] which two distinct physical paths...are provisioned and assigned to a virtual path (VP) that connected two end points" (Advisory Action, page 2). However, the Advisory Action fails to refute the arguments outlined above and merely restates the alleged disclosure of Saleh. Accordingly, Applicants submit that the final Office Action and Advisory Action have failed to establish a prima facie case for anticipation.

Therefore, for at least the reasons discussed above, Applicants respectfully submit that Saleh fails to disclose or suggest all of the elements of claims 1, 5, 9, 14, and 16-18. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claims 2-4, 6-8, 10-13, and 19-20 are dependent upon claims 1, 5, 9, and 14, respectively. As such, claims 2-4, 6-8, 10-13, and 19-20 should be allowed for at least their dependence upon claims 1, 5, 9, and 14, and for the specific limitations recited therein.

Claim 13 was rejected as being unpatentable over Saleh in view of Lamport (US 5,138,615). Applicants submit that this rejection is also in clear error for at least the following reasons.

Claim 13 is dependent upon claim 9. As discussed above, Saleh fails to disclose or suggest all of the elements of claim 9. Furthermore, Lamport does not cure the deficiencies in Saleh, as Lamport also fails to disclose or suggest a controller configured to "monitor the state of a critical up-link, the critical up-link being an only link to an upper stage tree element in the tree structure of a redundant tree structured local area network comprising at least two separate subtrees ending to a set of same host devices,

wherein each subtree comprises to at least one intermediate stage and wherein an intermediate stage tree element of one tree is not directly connected to an intermediate stage tree element of another tree at the same stage, detect a link-down state in the critical up-link, and set a dependent down-link in a link-down state, the dependent down-link leading to a lower stage tree element in the tree structure and being an only link to the lower stage tree element in the tree structure." Accordingly, the combination of Saleh and Lamport does not disclose or suggest all of the elements of claim 13. In addition, claim 13 should be allowed for at least its dependence upon claim 9, and for the specific limitations recited therein.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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Enclosures: PTO/SB/33 Form
            Notice of Appeal
            Petition for Extension of Time
            Check No. 19869